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# INTERIM REPORT

RESPECTING

## Issuers of Marriage Licenses

OF THE

Commission to Inquire into, Consider and Report upon  
the Best Mode of Selecting, Appointing, and  
Recommending Sheriffs, etc., etc.

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PRINTED BY ORDER OF  
THE LEGISLATIVE ASSEMBLY OF ONTARIO

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TORONTO:

Printed by CLARKSON W. JAMES, Printer to the King's Most Excellent Majesty

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**INTERIM REPORT**  
**RESPECTING**  
**ISSUERS OF MARRIAGE LICENSES**

To HIS HONOUR LIONEL HERBERT CLARKE,  
*Lieutenant-Governor of Ontario.*

MAY IT PLEASE YOUR HONOUR:

Having been appointed by Royal Commission to inquire, consider and report (among other things) upon the best mode of selecting, appointing and remunerating Issuers of Marriage Licenses and generally to consider and report upon all matters pertaining to the placing of such office upon the most efficient and business-like footing, we hereby submit this interim report thereon.

The issue of marriage licenses in Canada apparently had an ecclesiastical origin and the fees at one time appear to have gone to the Governor personally. Later, agents for the purpose of issuing marriage licenses were appointed by the Civil Secretary of the Governor. A fee of £2 was charged on each commission of appointment of an agent and the agent was required to pay a further fee of twenty shillings on each license issued through him. These fees were fixed under instructions from the Secretary of State for the Colonies at London, and went to the Civil Secretary personally as an appendage to his office.

The amount charged by the agent was not regulated by the Government, and so long as he paid the twenty shillings fee to the Civil Secretary he might charge the applicant for a license what he pleased. Under these circumstances, it is not surprising to learn that the charge for a marriage license was far from being uniform, varying, it is said, from thirty shillings to five pounds. It appears that even the latter sum was at times exceeded.

In 1842 a change took place. The Civil Secretary ceased to receive the fees that had heretofore been paid to him and they went into the general revenues of the Government. Soon after this an investigation appears to have taken place and it is not surprising to learn that the plan then prevailing was described by the Committee conducting the enquiry as "a notorious system of extortion." Thereafter issuers of marriage licenses were appointed by the Chief Clerk in the Provincial Secretary's office. The fee for a license was fixed at thirty shillings, of which ten shillings went to the issuer and twenty shillings to the Government. The number of agents for the issue of licenses in Upper Canada in 1849, was sixty-nine.

The earliest legislation in Ontario after Confederation, in regard to the issue of marriage licenses, was the Marriage Act of 1874. This Act provided for the issue of licenses or of certificates which were in effect licenses, and either of these forms might be used. These licenses or certificates were issued from the office of the Provincial Secretary and furnished to such persons as the Lieutenant-Governor in Council named for the purpose. The issuers appear to have been responsible persons throughout the community, and were confined to no special



class. Issuers had jurisdiction to issue licenses anywhere within the Province, but each issuer was instructed by the Department that he must issue no license outside the County in which he resided, and that if he disobeyed this injunction his commission to issue licenses would be cancelled. This rule of the Department appears to have been universally observed.

The Act of 1874 has continued in force with comparatively slight modification until the present time. There has, however, been a considerable change in the amount of the fees payable for a license. In 1874 the fee was \$2.00, the whole of which went to the issuer. By the Marriage Act of 1896 it was provided that the fee should continue to be \$2.00, but that of this, twenty cents should go to the Province, leaving \$1.80 for the issuer. In 1916 the fee was increased to \$5.00, of which \$1.80 still continued to go to the issuer, but the Government's share was increased from twenty cents to \$3.20. The revenue of the Government in 1919, from its share of the fee, was \$72,803.90 and in 1920, \$85,032.80.

The number of issuers of marriage licenses in Ontario to-day is about 1,500. In the City of Toronto the number of issuers is 137, more than four-fifths of whom appear to be jewellers. In Hamilton, the number of issuers is thirty-one, in Ottawa twenty-one. Throughout the Province the issuers who are jewellers outnumber those of any other occupation. Among those of other occupations we find druggists, real estate and insurance agents, merchants and undertakers. The undertaker is usually the local furniture dealer.

In nearly every instance the issuing of marriage licenses appears to be a mere "side line" and appointment as issuer appears to be usually sought for the purpose of attracting trade or business. The man who goes to a jeweller to secure a license is at the time a likely purchaser of a ring or other article from the jeweller's stock. The advertisement of a firm of jewellers brought to our attention reads:—

"We have a special private office for issuing marriage licenses and choosing engagement and wedding rings, and we can arrange a minister for you."

With scarcely an exception, the present issuers of marriage licenses are worthy men and good citizens, but, throughout the Province there has been expressed to the Commission a practically unanimous desire that the right to issue marriage licenses should not be conferred for the purpose of attracting trade or business, but that there should be a certain dignity about the act and that a license instead of being sold over the counter should be issued as an official act by a person holding an important office in the community. Before a marriage license is issued the applicant is required to take an oath that the parties to be married are not related within the prohibited degrees and that the consent of parents, where required, has been obtained. This oath, we fear, has in many instances not been administered as required by law. We are informed by Judges who have appeared before us that in certain cases tried by them in which the applicant for a marriage license was charged with perjury, they have had strong reasons to doubt whether any oath was actually administered.

At the present time births, marriages and deaths are registered with the Clerk of the municipality. He is a responsible and respected official and generally has a wide acquaintance throughout the municipality for which he acts. At nearly all, if not all, the sittings that the Commission has held, the Municipal Clerk has been proposed to us as the proper person to issue marriage licenses. In our opinion the proposal is sound, and we recommend that the Clerks of every city,

town, township and village be appointed issuers of marriage licenses, and that such licenses be issued exclusively by them except in the unorganized districts of the Province. In unorganized districts the issuer might well be the Police Magistrate. For the outlying points such as Moose Factory, etc., special appointments should be made.

If the Clerk to whom application for the license is made is one who knows the applicant personally, an additional safeguard against false statements is thus provided, and in order that so far as possible there may be such a safeguard, we recommend the license be issued by the Clerk of the municipality in which one of the parties resides. If the Clerk should be absent from the municipality, or incapacitated, the license should be issued by his deputy duly appointed. If the office should be vacant and there should be no deputy, the licenses might be granted by the Clerk of an adjoining municipality.

At the present time the applicant for a marriage license, who, it might be said is almost invariably the man, makes affidavit as to his age, occupation, residence, etc., and also as to the age, occupation, residence, etc., of the bride. If he states in the affidavit that either he or the bride is under the age of eighteen years he is required to produce the written consent of the parents or guardians. A number of cases have been brought to our attention where the age of the bride has been stated by the applicant to be eighteen years or over, when, in fact, it was less than eighteen years. Great wrongs have been done through these false statements, and we feel that every possible precaution should be taken to prevent their recurrence. In our opinion the law should provide that, in all cases where the parties reside within the Province, both the man and woman shall appear personally before the issuer and each of them make affidavit verifying the particulars required respecting him or her. When one of the parties resides outside of the Province, an affidavit of such party similar in form to the affidavit required to be made before the issuer should be filed with him. In cases where one of the parties is under eighteen years of age, a marriage license should not be issued on the production by the applicant of the written consent of the parents or guardians, but the parents or guardians of the party under age should also, if resident in Ontario and physically able so to do, personally appear with the applicants and sign and acknowledge their consent in the presence of the issuer. Provided, however, that if the consent of parents or guardians is in any case unreasonably withheld the Deputy Registrar-General may consent to the marriage and his consent shall be sufficient.

In the event of there being any doubt in the mind of the issuer as to the identity of the parties or as to the correctness of any of the statements made by the applicants, he should have full power and authority to require the production of witnesses to identify them or either of them, and also to examine under oath or otherwise, other witnesses as to any material enquiry pertaining to the issuing of the license.

The legal age for marriage, which is now eighteen for both sexes, should in the case of the man be raised to twenty-one years, so that no man could be married if less than twenty-one years of age, without the consent of parents or guardians, or the Deputy Registrar-General. The applicants for a marriage license might well be required to state in their respective affidavits whether he or she is a divorced person, and if so, when and where, and by what court or legislative body the divorce was granted. The record of licenses issued should be open for public inspection in the office of the Clerk.



The present license fee seems high and that portion that goes to the Province is apparently considerably more than sufficient to pay the expenses of the Registrar-General's office and any other expenses incidental to the issuing of marriage licenses. In our opinion, it is against sound public policy to raise revenue for the general purposes of the Province by a tax on marriage licenses. As, however, larger expenditure may in the future be required for the purpose of carrying out regulations that hereafter may be made, we do not see our way clear to recommend any reduction in the present fee. We are of opinion that \$1.00 is quite enough to allow the issuer, and that \$4.00 of the fee should go to the Province, and we so recommend.

In townships, incorporated villages and towns, the fee should go to the Clerk of the municipality and in cities should go as the Council may direct. We deem it important, however, to remove, as far as possible, the element of personal gain to the issuer through the issue of a license. We, therefore, recommend that, after one year from the date of the coming into force of the Act providing that marriage licenses shall be issued by municipal Clerks, all Clerks of municipalities, where the fees go to the Clerk, shall commute the fees for a fixed sum payable annually by the municipality to the Clerk and that the fees shall thereafter go to the municipality. In the event of the Council of the municipality and the Clerk not agreeing upon the amount of the commutation to be fixed, it should be fixed by the County Judge.

While in cities the fees would go to the municipality, the additional work and responsibility placed upon the Clerk should be recognized by the Council and the Clerk's salary increased in cases where justice would demand it. We recommend that where additional help may be required in a Clerk's office, owing to the issuing of marriage licenses, a crippled returned soldier or sailor possessing the necessary qualifications be employed.

In the course of our inquiry we have been impressed with the difficulties and expense surrounding the administration of justice owing to the increasing number of mentally defective people. These difficulties are said to be increasing at a greater ratio than the population is increasing and as a result the State will be called on to make much larger expenditures. The Commission has been impressed with the thought that instead of making elaborate plans and enormous expenditures for treatment of the result, it might be well to consider the possibility of treating the trouble at its source by placing restriction upon the marriage of the mentally defective and insane. We have been asked to recommend that no marriage license be granted unless the applicant furnishes the certificate of a physician that the parties are free from physical and mental disease. The question is a most vital one but appears to us to be beyond the scope of our Commission. We recommend, however, that the Government cause an inquiry to be made into the subject of the marriage of the unfit and that a Committee of men and women possessing special qualifications be appointed for that purpose.

In the State of New York no marriage license is issued unless both parties make and verify under oath, the following statement:

"I have not to my knowledge been infected with any venereal disease, or if I have been so infected within five years I have had a laboratory test within that period which shows that I am now free from infection from any such disease."

Whether or not such a statement should be required from applicants for a license in Ontario is worthy of consideration by the Legislature.

Our recommendations may be summarized as follows:

1. That the Clerks of all municipalities be made issuers of marriage licenses and that in unorganized districts Police Magistrates be issuers, and that in the more remote districts special appointments be made, and that all commissions to issue marriage licenses now held by others be cancelled.

2. The licenses should be granted by the Clerk of the municipality in which the parties, or one of them, reside.

3. That both parties should be required to personally appear before the issuer and make affidavit as to the particulars required as to himself or herself respectively.

4. That the legal age of marriage in the case of the man be raised to twenty-one years.

5. That where one or both of the parties are under legal age no license shall be issued unless the parents or guardians of the one under age also appear with the parties before the issuer and give their consent. Provided that the Deputy Registrar-General may consent if the consent of parents or guardians should be unreasonably withheld.

6. That full power be given to the issuer of marriage licenses to require the production of witnesses to identify the applicants for a license and also to examine, under oath or otherwise, other witnesses touching any material inquiry pertaining to the issuing of the license and that the record of licenses issued be open for public inspection.

7. That the license fee be fixed at \$5.00, of which \$1.00 shall go to the issuer and \$4.00 to the Provincial Government. In cities the \$1.00 fee shall go to the municipality. In other municipalities it shall be commuted for a fixed annual sum payable to the Clerk of the municipality as hereinbefore set forth.

8. That where additional help is required by the issuer of marriage licenses, a crippled returned soldier or sailor possessing the necessary qualifications be employed.

9. That the Government appoint a Committee of specially qualified persons for the purpose of considering and reporting upon the advisability of restricting the issue of licenses for the marriage of the mentally defective and insane.

(Sgd.) W. D. GREGORY, *Chairman.*

HORACE L. BRITAIN.

NORMAN SOMMERVILLE.

ALBERT HELLYER.

E. A. POCOCK.

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